

REMARKS

In accordance with the foregoing, the specification is amended to correct a translation error and claims 1, 4, 8, 9, 12, 16 and 17 are amended to clarify the claimed invention. No new matter has been presented and, accordingly, approval and entry of the foregoing specification and claim amendments are respectfully requested.

STATUS OF CLAIMS

Claims 1, 4-9, and 12-18 are pending and under consideration.

Claims 1, 4, 8, 9, 12 and 16-18 are rejected.

ITEM 5: REJECTION OF CLAIMS 1, 4, 8-9, 12 and 16-18 UNDER 35 U.S.C. §102(b) FOR ANTICIPATION BY OR, IN THE ALTERNATIVE, FOR OBVIOUSNESS UNDER 35 U.S.C. §103(a) IN VIEW OF GERRISH (US 2001/0040720, PUBLISHED NOVEMBER 15, 2001)

The rejection is respectfully traversed.

As per independent claims 1 and 9, the input power corresponds to "Pin", the output power corresponds to "Pout", and the "factor" corresponds to "Poutase/Gset" (see, equation (2)). Gerrish lacks any teaching of the calculation of the "factor" (Poutase/Gset), based on the input power (Pin) (and the temperature (T)), and the control of the optical amplifying unit, based on the output power (Pout) and a result of addition of the input power (Pin) and the "factor" (Poutase/Gset) (see, equation (3)).

With respect to independent claim 17, Gerrish lacks any teaching of detection of the temperature of an EDF and calculation of the power of ASE (Poutase) - - (see, paragraph at page 12, lines 5-15 and equation (2)).

Accordingly, it is respectfully submitted that the claims clearly, patentably distinguish over the rejections and references of record and that the rejections both on grounds of anticipation and obviousness are without basis and should be withdrawn. It is respectfully submitted, further, that the asserted deficiencies of the claims as pending herein heretofore, such as at pages 3-4 of the Action as to what is alleged to be "well-known" in the prior art and what purportedly "would have been obvious to one of ordinary skill in the art..." are unsupported by any *prima facie* demonstration of such obviousness and, hence, are deficient and should be withdrawn. MPEP 706.02(j) and MPEP 2143-2143.03.

Applicants, furthermore, submit that the italicized claim language set forth at page 3 of the Action and characterized as “a functional limitation, i.e., intended use...” in the last paragraph at page 3 of the Action is misplaced and in any event rendered moot in view of the amendments to the independent claims hereinabove.

Furthermore, Applicants note the statement at page 4, lines 1-2 of the Action that:

...[T]he Examiner has reason to believe that the functional limitation can be performed by the prior structure art structure. See, MPEP 2114.

It is respectfully submitted that MPEP 2114 does not support the contention for which it is apparently cited. Moreover, the Examiner is supporting the rejection by expressing his “reason to believe”, which is basing the rejection on the personal knowledge of the Examiner, and not on the art of record. The personal knowledge of the Examiner when used as a basis for a rejection “must be supported” by an Affidavit as to the specifics of the facts of that knowledge when called for by Applicant. See, e.g., 37 CFR §1.104(d)(2). In short, the rules of the U.S. Patent and Trademark Office do not allow discretion on the part of the Examiner. Either the Examiner must support this assertion with an Affidavit or withdraw the rejection. The Examiner, accordingly, is requested to support the rejection with either an Affidavit or a reference, or withdraw the rejection.

CONCLUSION

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

If there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

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If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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By: _____


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